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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,597

03/19/2004

Rodney Kern

29020/97035C

9552

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7590

05/17/2005

MARSHALL, GERSTEIN & BORUN LLP  
233 S. WACKER DRIVE, SUITE 6300  
SEARS TOWER  
CHICAGO, IL 60606

EXAMINER

REDMAN, JERRY E

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/804,597

Applicant(s)

KERN ET AL.

Examiner

Jerry Redman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-66 and 70-72 is/are pending in the application.
- 4a) Of the above claim(s) 35,38-41,45,48-51,55,58-66 and 70-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-34,36,37,42-44,46,47,52-54,56 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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Applicant's election of Group II and species of Figures 1-9 in the reply filed on 2/28/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Status of the claims:

Claims 1-28 and 67-69 have been cancelled;

Claims 35, 38-41, 45, 48-51, 55, 58-66, and 70-72 are hereby withdrawn as being directed towards a non-elected invention; and

Claims 29-34, 36, 37, 42-44, 46, 47, 52-54, and 56-57 are hereby addressed below.

The disclosure is objected to because of the following informalities: it appears that the continuation data following the title should be updated. More specifically, serial no. 10/006,558 is now abandoned and serial no. 09/394,027 is not Patent No. 6,360,487.

Appropriate correction is required.

Claims 37 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not readily apparent to the Examiner what is meant by "...relatively rigid segments form an articulated assembly". How can the segments perform this function?

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29-34, 36, 37, 42-44, 46, 47, 52-54, and 56-57 are rejected under the judicially created doctrine of double patenting over claims 1-3, 6, 8, 9, 11, 16-18, and 22 of U. S. Patent No. 6,360,487 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a door, a resilient core, a flexible covering partially covering the core, an actuation system, and a plurality of rigid segments located between the core and the flexible covering.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of

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the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.


Claims 29-34, 36, 37, 42-44, 46, 47, 52-54, and 56-57 are further rejected under 35 U.S.C. 102(b) as being anticipated by Overholt et al. Overholt et al. disclose a door comprising a door panel (24) having a foam insulation resilient core (60), a flexible covering in the form of a thin flexible outer skin (26) and a back flexible skin (50, formed of plastic film), which partially covers the resilient core (60), an actuation system (18), and a plurality of rigid planar segments (72) interposed between the core and flexible skin (column 4, lines 58-61).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patent to Bengtsson discloses all of the elements of the applicant's instant invention except providing an articulation system. U.S. patent to Gilchrist et al. disclose a panel assembly having reinforcing elements (16) similar to that of the applicant's invention. U.S. patent to Andersen discloses a panel assembly having reinforcing elements (42) similar to that of the applicant's invention. U.S. patent to Bennett discloses a high impact door similar to that of the applicant's invention. U.S.

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patent to Walker et al. disclose a flexible panel similar to that of the applicant's invention. U.S. patent to Kober et al. disclose a flexible panel assembly similar to that of the applicant's invention.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 571-272-6835.



**Jerry Redman**  
**Primary Examiner**